May 3, 1999

BLM Administrative Record
Nevada State Office
1340 Financial Boulevard
Reno, NV 89520

Re: Proposed 43 CFR 3809 Regulations (64 FR 6422, February 9, 1999)
Comments on the Draft Environmental Impact Statement

The Northwest Mining Association ("NWMA") is a 104 year old, 2,500 member non-profit, non-partisan trade association based in Spokane, Washington. NWMA's purpose is to support and advance the mineral resource and related industries, to represent and inform members on technical, legislative and regulatory issues, to provide for the dissemination of educational materials related to mining, and to foster and promote economic opportunity and environmentally responsible mining.

Our members reside in 42 states and are actively involved in exploration and mining operations on BLM administered land in every western state. Our membership represents every facet of the mining industry including geology, exploration, mining, engineering, equipment manufacturing, technical services, and sales of equipment and supplies. Our broad-based membership includes many small miners and exploration geologists as well as junior and large mining companies. More than 90% of our members are small businesses or work for small businesses.

Our members have extensive first-hand experience with the 43 CFR 3809 regulations ("3809 regulations"). Many of our members can personally attest to the success which the current 3809 regulations have had in promoting environmentally responsible mining, preventing unnecessary or undue degradation of the public lands, and requiring effective reclamation of mines on BLM administered land.

Development of hardrock minerals creates new wealth, which is distributed throughout the U.S. economy and society. The public lands provide a major source of domestic mineral production. Mining on BLM administered lands also provides the Nation's highest paid non-supervisory wage jobs. These jobs are the cornerstone of western rural economies and are the foundation for the creation of many non-mining service and support businesses. Hardrock mining on BLM administered land also provides substantial federal and state tax revenues. Thus, any decision to revise the 3809 regulations must recognize the important role of the U.S. minerals industry in maintaining a strong, vibrant economy, now and in the future.

INTRODUCTION:

In a letter dated June 20, 1997 to Mr. Paul McNutt, 3809 EIS Team Leader (copy attached and incorporated by reference as though fully set forth herein), NWMA provided comments to BLM regarding the agency's proposal to revise the 3809

regulations. Specifically, we responded to the issues raised in the March 1997 materials from BLM's 3809 Task Force that outlined issues to be considered during the proposed scoping and revision of the 3809 regulations, and to comments made by Secretary Babbitt in his January 6, 1997 memorandum to the Assistant Secretary, Land & Minerals and the Acting Director, BLM. As discussed throughout this letter, NWMA finds that BLM’s Draft Environmental Impact Statement (DEIS) and the accompanying proposed rule have failed to acknowledge or consider a number of vital issues, concerns, and questions raised by our members at the various public scoping meetings held throughout the west and in Washington DC, and in our June 20, 1997 letter to Mr. McNutt.

In developing our comments on the DEIS, NWMA has relied on its members' experience in working on mining and mineral exploration projects on BLM administered lands, and have given special consideration to the following:

- The strength, comprehensive nature, and proven track record of the 3809 regulations;

- The high level of environmental protection and reclamation achieved under the current regulatory framework applicable to mining, including the 3809 regulations;

- The lack of any compelling justification or need identified by BLM that would warrant modification of the 3809 regulations;

- The failure of the DEIS to give any consideration to (1) a number of issues, concerns and alternatives that NWMA and its members raised during BLM scoping meetings and in NWMA's June 20, 1997 written comments; and (2) the alternatives and issues we believe should be evaluated in the DEIS but, regrettably, are not; and

- Our concerns that BLM’s effort to revise the 3809 regulations not be misused as a political process to circumvent Congress and improperly attempt to revise the Mining Law statutes through the rulemaking process.

The comments in this letter focus principally on the DEIS. NWMA is submitting separate letters outlining our comments on the proposed 43 CFR Part 3809 rule published at 64 F.R. 6422 (February 9, 1999) and the Benefit-Cost Analysis/Unfunded Mandates Reform Act Analysis and Initial Small Business and Regulatory Flexibility Act Analysis dated December 22, 1998. In addition, NWMA fully supports and adopts the comments filed by the National Mining Association, the Alaska Miners Association, the Colorado Mining Association, the Nevada Mining Association, the Women's Mining Coalition and Jules Tileston as though fully set forth herein.

COMMENTS ON THE SCOPE OF THE DEIS DEVELOPED IN CONJUNCTION WITH THE REVISED 3809 REGULATIONS

1. The DEIS Fails to Demonstrate a Need for Substantial Revisions to the 3809 Regulations.

The proposed rule described in alternative 3 is a solution still looking for a problem. As stated in NWMA's June 20, 1997 letter to Mr. McNutt, BLM must develop a meaningful Statement of Purpose and Need. NWMA recognizes that the DEIS includes a statement of "Purpose of and Need for Action". However, the data presented in the DEIS do not support this statement - especially with respect to problems described for Notices of Intent (NOI).

The BLM must justify the proposed revisions to the 3809 regulations. The DEIS and other BLM materials furnished to date provide no compelling reason to change the regulations. An April 1992 BLM study of the 3809 regulations showed no need for any changes to the environmental or reclamation provisions of these regulations. BLM regulations, policies and guidelines developed since 1992, including the cyanide and acid rock drainage policies, and the surface use and occupancy regulations, are substantive contributions to the 3809 program. They also demonstrate the inherent strength of the current regulations to meet the challenges of an ever-changing mining industry while still effectively preventing undue or unnecessary environmental degradation. BLM has failed to demonstrate that the current state and federal regulatory framework governing mining on BLM administered lands is failing to protect the environment, suggesting that the conclusions reached in April 1992 remain valid. In fact, as discussed below, the data presented in the DEIS support the conclusion that the regulations do not need substantial revision.

It has been more than two years since Secretary Babbitt issued his January 6, 1997 memorandum. From the beginning of the process, the governors of the Western States, individually and collectively through the Western Governors' Association (WGA), have repeatedly asked "What's broken?" In more than two years of trying, BLM has failed to identify one compelling reason for rewriting the existing 3809 regulations. After reviewing the August 11, 1998 Discussion Draft of proposed changes to the 3809 regulations, the WGA wrote to BLM and stated, in part:

> [A]s we stated at the outset of our meeting, we remain concerned that BLM has still not made a compelling case for the need to rewrite the existing 3809 Regulations. We believe the current system is working well, with each state and BLM state and district office having established effective joint working relationships for the regulation of mining on BLM property. To garner state support for the proposed changes to its 3809 Regulations, it is incumbent upon BLM to demonstrate that there is a problem that needs fixing, that the proposed 3809 changes are the most efficient, effective and equitable means to fix the problem, and that there are clear environmental benefits for any added costs to implement or comply with the new regulations.

NWMA agrees wholeheartedly with the WGA "that BLM has still not made a compelling case for the need to rewrite the existing 3809 Regulations." BLM asserts in the DEIS that revisions to the 3809 regulations are necessary to protect the environment from the impacts of operations conducted under the Mining Law. NWMA disagrees and asserts that BLM already has all the power it needs to protect the environment from the largest mining operations. The large number of environmentally responsible mines developed under the 3809 regulations since 1981 is a testament to this fact.

BLM's Fact Sheet and News Release materials that appear on BLM's Internet website claim that the new regulations are urgently needed to eliminate degradation to federal lands due to operations that do not have bonds or have inadequate bonds. These assertions are inappropriate, inflammatory and inaccurate. In commenting about similar BLM claims that changes to the 43 CFR 3809 bonding regulations were urgently needed, United States District Court Judge June L. Green in *Northwest Mining Association v. Babbitt*, 5F. Supp. 2d 9 (D.C.C., 1998) states at 15:

> The BLM, arguing for continued enforcement, warns of potential publicly funded restoration efforts and cites a 10 year old report showing estimated restoration cost…. The Court, however, is unconvinced by such anecdotal evidence. In fact, the Court does not find that much would change should enforcement be discontinued. Large, open-pit mines are already subject to discretionary local requirements by the BLM as plan level operations. Moreover, the BLM admits that it already has in place a policy which requires 100% bonding for all mining operations which use cyanide or other dangerous leachettes. In other words, to protect the environment against the most potentially dangerous mining operations, the BLM need only exercise its existing powers between a remand and its next final rule promulgation.

Absent a compelling need, NWMA questions the appropriateness of the BLM's proposal to revise these long-standing regulations that have been working well, especially in light of the following:

- BLM already has all the authority it needs to protect the environment,
- the large number of environmentally responsible mines developed under the 3809 regulations,
- the industry's good track record in complying with these regulations,
- the requirement at 43 C.F.R. §3809.0-5(k) that mining operations comply with all applicable state and federal environmental and reclamation laws, and
- the complete absence of any actual evidence that the existing regulations are inadequate.

2. The DEIS Fails to Consider the Findings and Recommendations of the National Academy of Sciences Study Mandated by Congress.

Concern over the need for revisions to the 3809 regulations is so widespread that Congress requested the National Academy of Sciences (NAS) to conduct an independent study to determine the need for action. In October 1998, more than 3 months before the Secretary caused the proposed rule to be published in the Federal Register, Congress required the Secretary of Interior to enter into an agreement with the NAS, Board on Earth Sciences and Resources, to conduct a detailed, comprehensive study of the environmental and reclamation requirements related to mining of locatable minerals on federal lands and the adequacy of those requirements to prevent unnecessary or undue degradation of federal lands in each state in which such mining occurs.

As specified by Congress, "The study shall identify and consider:

A. the operating, reclamation and permitting requirements for locatable minerals mining and exploration operations on federal lands by federal and state air, water, solid waste, reclamation and other environmental statutes, including surface management regulations promulgated by federal land management agencies and state primacy programs under applicable federal statutes and state laws and the time requirements applicable to project environmental review and permitting;
B. the adequacy of federal and state environmental, reclamation and permitting statutes and regulations applicable in any state or states where mining or exploration of locatable minerals on federal lands is occurring, to prevent unnecessary or undue degradation; and
C. recommendations and conclusions regarding how federal and state environmental, reclamation and permitting requirements and programs can be coordinated to ensure environmental protection, increase efficiency, avoid duplication and delay, and identify the most cost-effective manner for implementation."

The NAS report is required to be submitted to the appropriate federal agencies, the Congress, and the governors of the affected states no later than July 31, 1999. Congress allocated $800,000 to the NAS for the purposes of conducting the required analysis. Congress further prohibited the Secretary of Interior from promulgating final 43 CFR Part 3809 regulations prior to September 30, 1999.

A congressional request for an independent study indicates that the 3809 rulemaking is an extremely serious matter. NWMA submits that it was Congress' clear intent that the NAS study be considered and incorporated in any proposed rulemaking and, most importantly, that the affected public and the affected states have an opportunity to consider the findings and recommendations of the NAS study in developing their comments to the proposed rule and the DEIS. BLM's failure to wait for the NAS study and the cavalier treatment BLM is providing in the Preamble to the Proposed Rule and in the DEIS to the continued requests for a *true* statement of need before going forward with this rulemaking demonstrates Secretary Babbitt's contempt for Congress, the affected public and the rule of law.

Since the purpose of the NAS study is to address whether the revisions are necessary, the DEIS is substantively and legally flawed and procedurally inadequate if it does not include the study's findings and recommendations.

In addition, NWMA agrees with the Small Business Administration Office of Advocacy that BLM's failure to extend the public comment period to allow sufficient time for the public to consider the findings and conclusions of the NAS study in their review and comment on the proposed rule and DEIS is arbitrary and capricious behavior that may subject BLM to challenges under the Administrative Procedures Act (Letter dated March 24, 1999 to Mr. Tom Fry. Copy attached and incorporated by reference).

The BLM should re-open the comment period for a minimum of 120 days after the NAS study is presented to allow the public to review and possibly incorporate the findings of the study in their comments. Failure to extend or re-open the comment period after the study is completed is contrary to the public interest and in violation of the procedural safeguards provided by the APA.

3. The DEIS Fails to Consider Significant Issues and Reasonable Alternatives Raised by NWMA During Scoping.

NWMA submitted detailed written comments to BLM in a June 20, 1997 letter addressed to Mr. Paul McNutt, 3809 EIS Team Leader. NWMA finds that BLM's DEIS and the accompanying proposed rule have failed to acknowledge or consider a number of the substantive issues, concerns, and questions raised in our June 1997 letter to Mr. McNutt. This is just one of many reasons why NWMA believes that the DEIS to be substantively and legally flawed and procedurally inadequate.

The National Environmental Policy Act (NEPA) and the Council on Environmental Quality (CEQ) regulations for implementing NEPA (40 C.F.R. §1500) and for preparing documents, such as this DEIS, requires BLM to acknowledge, track, and respond to issues raised during project scoping. In preparing this DEIS, it appears that BLM has ignored its own internal guidance considering comments received during public scoping. For example, page V-2 of BLM's NEPA Handbook (H-1790-1) includes the following statements regarding scoping:

> 1. **Scoping the EIS** (40 CFR 1501.7, 1506.6 and 1508.25). The purpose of scoping, generally, is to focus the analysis on significant issues and reasonable alternatives in order to eliminate extraneous discussion and limit the length of the EIS. Among other things, scoping helps: involve the public and affected agencies early in the process; identify significant issues to be analyzed as well as alternatives and potential impacts to be addressed; and allocate assignments for preparing the document among lead and cooperating agencies.…

Page V-3 directs BLM to consider public input in identifying the proposed action:

> 1.d. **Define Proposed Action.** Defining the proposed action plan is key to subsequent analysis. It is an ongoing process which usually begins prior to the issuance of the NOI. *In the case of a BLM-initiated proposal, the proposed action will usually evolve and change based on the results of public input during scoping and subsequent analysis* (Emphasis added). Thus, for internal proposals, the identification and definition of the proposed action is generally more tentative in the early stages.…

Unfortunately, with respect to many of the issues raised by NWMA's June 20, 1997 letter, BLM has not fulfilled its legal obligations under NEPA and the CEQ regulations to respond to our comments and suggested alternatives. At the very least, the DEIS should explain why many of NWMA's issues and suggested alternatives were eliminated from further consideration. The DEIS sections entitled "Alternatives Considered but Eliminated" (page 9), and "Issues and

Concerns Not Addressed" (page 22) make absolutely no mention of the issues and suggested alternatives presented in our June 20, 1997 letter to Mr. McNutt and repeated verbatim below:

- The DEIS Must Include a Detailed Discussion of the No Action Alternative - The DEIS must include a substantive and thorough analysis of the No Action Alternative to evaluate the level of environmental and reclamation regulatory requirements that would be applicable to future mining projects on BLM administered lands with no changes to the 3809 regulations. The No Action Alternative must consider existing state and federal regulatory programs and BLM's existing authority and recent use of this authority to modify the 3809 regulations through policy guidelines and rulemaking on selected topics (e.g., the development of BLM policy guidance on acid rock drainage and cyanide, and new occupancy and bonding rules).

- The DEIS Must Analyze the Wide Range of Sites and Mines Regulated Under the 3809 Program - There is an enormous diversity of climate, terrain, geology, mineral deposit types, and mining methods represented by mine sites on BLM administered lands. Both the Affected Environment and Environmental Consequences chapters of the DEIS must give full and equal weight to the many different types of environmental settings and mines, and provide a separate analysis of the impacts that would occur at these different settings and mines if the various alternatives considered in the DEIS were implemented.

- The DEIS Must Include a Detailed Analysis of State and Other Federal Environmental Laws and Regulations Affecting Mining -The Affected Environment chapter of the DEIS should also include a detailed discussion of the many state environmental and reclamation regulatory programs and federal laws and regulations affecting mining. The Environmental Consequences chapter should assess how these programs would be affected due to implementation of the DEIS alternatives. In particular, this analysis should quantify impacts to state mine land reclamation programs and federal environmental regulatory programs for which the states have primacy. Because many of these state regulatory programs were developed after enactment of FLPMA and development of the 3809 regulations, the DEIS should acknowledge the evolution of these programs and the coordination that has developed between BLM and state mine land reclamation and environmental regulatory agencies.

  Based on information provided to date, BLM has not identified any gaps between the 3809 regulations and state mine land reclamation and environmental programs. The DEIS should assess whether any such gaps exist. If gaps are identified, proposed changes to the 3809 regulations should evaluate ways to fill the gaps. If this analysis reveals no gaps between state programs and the 3809 regulations, few if any revisions to the 3809 program are warranted - otherwise, the Secretary's directive to minimize duplicative regulations will not be satisfied.

- The DEIS Must Include a Detailed Analysis of Socioeconomic Impacts - Any changes to the 3809 regulations that could result in significant delays in approving future mineral exploration and mining PLANS could cause adverse economic and social impacts to mining communities, state economies, and other stakeholder groups including geologists, consultants, drilling contractors, analytical laboratories, and restaurant owners and motel/hotel operators in mining and exploration areas who derive a substantial portion of their income working for or providing goods and services to the hardrock mining industry. The Affected Environment chapter of the DEIS must acknowledge and quantify the positive social and economic impacts associated with mining. The Environmental Consequences chapter must disclose any positive or adverse social and economic impacts that would result from implementation of the DEIS alternatives. This analysis must be site-specific; a generic or national evaluation will not adequately assess the impacts to local communities and regional economies. More specifically, economic analysis solely on a national scale will inappropriately mask much of the impact. Because the majority of mine sites are in rural areas, and are the primary or predominant industry, the EIS team needs direct experience in and knowledge of rural western economies and the role that mining plays in those economies in order for this analysis to be done correctly.

  Additionally, the DEIS must evaluate the economic impacts that proposed changes in the 3809 regulations would have on mining equipment manufacturers and companies that provide goods and services to the mining industry. Many of these companies are located in parts of the country not typically considered mining states, such as Wisconsin (P & H Mining Equipment and Nordberg), Illinois (Caterpillar), New Jersey and Texas (Ingersoll Rand), etc. The continued existence of thousands of jobs in these states relies on a strong mining industry in the western U.S. The DEIS must thoroughly evaluate the economic consequences to these workers and to their state economies caused by changes to the 3809 regulations.

  Furthermore, analysis of small entities required by the Regulatory Flexibility Act, the Small Business Regulatory Enforcement Act and Executive Order 12866 needs to be coordinated with the socioeconomic analysis in the EIS. NWMA's membership includes a substantial number of small business entities that will be impacted by any changes to the proposed regulations.

- The DEIS Must Consider Specific Impacts to Notice-Level Operators - The Secretary's directive to repeal, narrow, or otherwise modify the 5-acre NOI process will have a direct and focused impact upon individuals, small operators, and companies who perform most of their mineral exploration and/or mine development work under an NOI. The DEIS should include a separate socioeconomic analysis of the impacts of the proposed changes upon this group of stakeholders. Because most mineral discoveries start as NOI-level exploration projects, the DEIS must also evaluate the impact that elimination of the NOI process or delays in the NOI approval process would have on the rate of discovery, and consequently, the rate of new mine development, the ability of our

industry to meet society's demand for the products of mining, and the impact to local, regional and national economies.

- The DEIS Must Consider Cumulative Impacts - The DEIS must evaluate the cumulative impacts of any proposed changes to the 3809 regulations with respect to other connected actions including but not limited to the EPA's proposed National Hardrock Mining Framework, BLM's recent use and occupancy regulations, BLM's new bonding regulations, other EPA initiatives such as the recent addition of the hardrock mining sector to the Toxic Release Inventory (TRI) reporting requirements and potential changes to the RCRA Bevill exclusion for certain mining wastes, and changes to the Mining Law of 1872 being contemplated by Congress. This analysis should evaluate the cumulative impacts of changes in the 3809 regulations in conjunction with potential changes in royalties, fees, taxes, reporting requirements, and a plausible range of future regulatory developments.

- The DEIS Must Consider Impacts to Minerals Availability - Changes to the 3809 regulations that result in significant delays in the PLAN and NOI approval processes may have an adverse impact on the supply of domestic hardrock minerals. The DEIS should evaluate the impact that revisions to the 3809 regulations would have upon minerals availability, and the potential for increased reliance on foreign mineral supplies. This analysis should consider the balance of foreign trade payments as a result of decreases in domestic mineral production. Similarly, the DEIS should consider how the 3809 regulations could be modified to encourage and facilitate mining on BLM administered lands and the resulting positive economic effects of increased mineral exports and decreased mineral imports.

- The DEIS Must Consider Impacts to Existing Operations - The DEIS must evaluate how existing operations would be affected by proposed changes to the 3809 regulations. The NWMA encourages BLM to develop a grandfathering alternative applicable to all existing operations. In the unfortunate event that the revised 3809 regulations mandate prescriptive performance standards, some element of grandfathering is necessary for both existing sites and sites at which a PLAN modification is filed in the future because it may be impossible or impractical to retrofit existing operations to comply with new standards.

- The DEIS Should Consider Alternatives to Facilitate Mining and to Create Reclamation and Environmental Incentives - Although the Secretary's January 6, 1997 memorandum does not contemplate changes to the 3809 regulations to facilitate mineral exploration and mine development or to create incentives for reclamation and remediation of abandoned mines, a number of beneficial social and economic impacts on the local, regional, and national levels could accrue from selected changes. The NWMA believes that regulatory changes to streamline the review process and stimulate clean-up of abandoned mines would significantly enhance mineral exploration levels without compromising the high

level of environmental protection and reclamation success realized under the present regulatory system. We strongly urge BLM to expand the scope of the DEIS to evaluate revisions to the 3809 regulations to encourage and facilitate environmentally responsible mining and reclamation of abandoned mines.

4. The DEIS Discussion and Analysis of the No Action Alternative are Substantively Inadequate and Legally Flawed.

The DEIS does not accurately describe nor adequately consider existing state environmental and reclamation laws and regulations affecting mining. The DEIS fails to acknowledge and analyze: (1) the comprehensive nature of Western state regulatory programs, (2) that the “unnecessary or undue degradation” clause of the current 3809 regulations has proven to be a comprehensive mechanism that effectively mandates environmental protection, (3) the impressive track record of the industry’s compliance with this standard, and (4) the numerous examples of environmentally responsible mining and outstanding reclamation at mines developed since 1981 under the framework of the 3809 regulations in coordination with other federal environmental laws and state regulatory programs (*see* J.W. Todd and D.W. Struhsacker, “Environmentally Responsible Mining: Results and Thoughts Regarding a Survey of North American Metallic Mineral Mines”, copy attached and incorporated by reference as though fully set forth herein).

The DEIS fails to analyze and state how the current definition of unnecessary or undue degradation specified in 43 CFR 3809.0-5 (k) is failing to protect the environment. The DEIS fails to recognize the stringent, comprehensive and appropriate levels of environmental protection provided by the current definition of unnecessary or undue degradation as set forth below.

- The definition states "Failure to comply with applicable environmental protection statutes and regulations thereunder will constitute unnecessary or undue degradation." This requirement to comply with other state and federal environmental regulations is an effective built-in mechanism for continually updating the 3809 regulations by incorporating all other relevant environmental laws and regulations simultaneously with their enactment.

- The requirement to comply with "applicable environmental protection statutes and regulations" automatically encompasses all environmental performance standards, including standards from other reclamation laws, as well as financial assurance requirements mandated in state and federal laws and regulations.

- The current definition appropriately implies a site-specific environmental performance standard. Retention of this site-specific concept is critically important to ensure that environmental and reclamation measures employed at mines on BLM administered land are responsive to site environmental conditions. The enormous diversity of climate, terrain, geology, and the

biologic and social environments at mines on BLM administered lands throughout the country demands a site-specific performance standard that gives BLM the necessary regulatory flexibility and discretion to make custom-tailored decisions appropriate for the site under construction.

- The current definition is a rigorous standard that demands comprehensive environmental protection and reclamation at mines on BLM administered land. The BLM's ability to make site-specific decisions about mines in no way lessens the mining industry's burden of compliance compared to other industries. Like all industries, the mining industry must comply with all applicable state and federal environmental protection laws and regulations because all mines operate under the umbrella of these provisions in addition to the 3809 regulations.

The DEIS fails to acknowledge that all mining operations, including casual use and operations under either a Notice of Intent or a Plan of Operations are required to comply with all pertinent federal and state laws, including, but not limited to air quality, water quality, solid waste, fisheries, wildlife and plant habitat. *43 CFR 3909.2.2*

The discussion of the use of Memorandums of Understanding (MOU) between state regulatory agencies and the BLM to integrate their approaches and resources for regulating mining on BLM administered land underscores the lack of need to revise the 3809 regulations by demonstrating that the current state-federal coordinated framework is working (DEIS, p. 31). The DEIS fails to consider and discuss whether strengthening state-federal partnerships and requiring MOU's might be the most appropriate solution if any problems were identified during the scoping effort.

5. The DEIS Fails to Include a Detailed Analysis of State and Other Environmental Laws and Regulations Affecting mining.

As noted above, the DEIS does not adequately consider existing state environmental and reclamation regulations. The summary of state regulatory programs (Appendix D) is incomplete and, overly simplistic. As a result, it is woefully inadequate. The survey prepared by Steven G. Barringer on behalf of the Precious Meals Producers entitled, "Mining Regulatory Programs in the Western United States – A Survey of State Laws and Regulations" is a more current, accurate and comprehensive summary of state regulatory programs. A copy of the survey is attached hereto and incorporated by reference.

The DEIS arbitrarily takes a one-dimensional review of state regulation of mining, reviewing only those programs that deal exclusively with mining. BLM fails to recognize that each state regulatory program, like the federal program, is composed of an integrated approach that combines the authority and expertise from several agencies. The result is a comprehensive regulatory approach that is the equal of that used by federal land management agencies. Some state programs include all media within a single mining agency program, while others have several agencies working in cooperation with environmental quality and wildlife programs that may reside with other state agencies. However, the end result is the same; each state has an effective and comprehensive approach to regulating mining activities.

Furthermore, the DEIS does not adequately consider and analyze the applicability of other federal environmental laws and regulations affecting exploration and mining on the public lands. The DEIS fails to consider the effective, joint working relationships formed between each state and the BLM state and district offices for the regulation of mining on BLM administered lands.

The DEIS fails to consider that many Western states have had environmental programs in place long before the major national environmental legislation of the early 1970's. These programs have matured and changed over the years, integrating new federal standards and imposing state based standards as more was learned about the environment and the impact of mining activities on the environment. The DEIS and the Proposed Rule fail to recognize that states have always had the lead responsibility for regulating mining on all lands within their borders, both public and private. States use authorities delegated to them under the federal Clean Air Act, Clean Water Act, Endangered Species Act, National Historic Preservation Act, and Resource Conservation and Recovery Act, as well as other federal acts in combination with state legislation, regulation and policies dealing with ground water and land reclamation. States exercise that authority on federal lands and seek cooperation with the federal land management agencies.

6. The DEIS Fails to Analyze the Need for Better Implementation of the Existing 3809 Regulations.

The DEIS fails to analyze or discuss the need for better federal integration and implementation of existing federal tools. A proper analysis of Alternative 1 would have considered how effectively the NEPA process and existing 3809 regulations are being carried out and considered how much better training of personnel, and more clear communication among BLM headquarters, BLM state offices, and BLM district offices would improve the current program. New more strict, inflexible federal standards are not the answer if problems found on the ground are due to administrative shortcomings. BLM should focus on outcomes, not building bigger hammers to hit nonexistent rails.

7. The DEIS Analysis of Socioeconomic Impacts Significantly Under Estimates the Adverse Economic Impacts to Specific Communities and Regions.

As described below, and in NWMA's comment letter on the Benefit-Cost Analysis/Unfunded Mandates Reform Act Analysis and Initial Small Business and Regulatory Flexibility Act Analysis (a copy of which is attached hereto and incorporated by reference), the DEIS Analysis of socioeconomic impacts is wholly inadequate and grossly dismissive of the adverse economic impact that the proposed regulations would have on small business, mining dependent businesses, and rural resource dependent communities. To describe the economic analysis contained in Appendices E and G as a joke would not be inappropriate. The shortcomings of the DEIS' economic analysis would be laughable if it were not for the importance of these issues and the severe adverse economic and lifestyle consequences the proposed rule would have on many small businesses, individuals and rural communities.

8. The DEIS Significantly Under Estimates the Adverse Impacts to Notice Level Operations, Especially Notice Level Exploration.

As described below and in NWMA's comment letter on the Benefit-Cost Analysis/Unfunded Mandates Reform Act Analysis and Initial Small Business and Regulatory Flexibility Act Analysis, the economic analysis presented in the DEIS (especially Appendices E and G) and the separate analysis documents are grossly dismissive of the economic hardships that many notice level operators and casual use prospectors will experience if the BLM's proposed action as described in Alternative 3: Preferred Alternative is implemented. Most notice level operations are conducted by individuals (exploration geologists) and small businesses engaged in exploration.

The DEIS demonstrates a complete lack of understanding of the realities of mineral exploration, and the dramatic and chilling effect that the proposed rule will have on exploration in the U.S. Exploration is the research & development branch of the mining industry charged with the task of finding new mineral deposits that can be mined in the future. Most mineral discoveries on BLM administered lands start out as NOI level exploration projects. In fact, some of the largest gold mines in Northern Nevada began as grassroots exploration projects. The proposed regulations would result in significant delays in the NOI approval process and dramatically increased costs. This would drastically reduce the rate of mineral discovery on public lands. Fewer discoveries of economic deposits ultimately means a substantial decrease in U.S. mineral production. This impact of the proposed regulations is inconsistent with Congressional mandates contained in the Federal Land Policy and Management Act of 1976 and the Mining and Mineral Policy Act of 1970 to promote responsible development of the Nation's mineral resources.

It is critically important that BLM retain a process that is responsive to the constantly changing nature of exploration projects, recognizes the need for operational flexibility, and allows expedited review and authorization of exploration level activities that disturb 5 acres or less. BLM's approval process for exploration must recognize that mineral exploration is fundamentally a phased and iterative undertaking. Little is known about a potential deposit at the early stages of exploration. Thus, exploration plans are constantly being revised and refined on the basis of previously collected information. The precise location of future drill sites depends wholly on interpretation of data obtained from previous drilling and results from other investigatory tools. Additionally, seasonal weather constraints at exploration sites in a number of settings throughout the country severely limit the practical exploration season.

Exploration will wither under the cumbersome regulatory approval process contained in the proposed regulations due to imposed delays and increased costs. The proposed NOI process will not be able to accommodate frequent modifications to exploration plans in response to new information, or react in time to minimize problems associated with logistical and weather constraints. BLM approvals for ongoing changes in exploration programs will take far too long to obtain, preventing efficient operations and increasing costs. This will result in diminished exploration both in terms of the overall number of exploration projects and the rate at which remaining exploration efforts proceed. The ultimate outcome will be a substantial reduction in mineral resources and reserves that will be identified and eventually developed in the future.

9. The DEIS Fails to Consider the Cumulative Impacts Associated with Other Federal Rulemakings Affecting Mining.

In addition to the issues listed in our June 20, 1997 letter, the following new federal actions should be included in a cumulative impacts analysis: Clean Water Act proposals regarding Total Maximum Daily Loads (TMDLs); water quality standards ANPRM; the Interior Columbia Basin Ecosystem Management Project; the United States Forest Service's new interim road policy; all ESA listings and the Department of Interior's recent and inappropriate decision regarding the use of millsites in connection with mining claims.

See also the comments of the National Mining Association for a description of other rulemakings affecting mining that must be considered by BLM in an adequate cumulative impacts analysis.

10. The DEIS Fails to Consider Impacts of Changes to the 3809 Regulations to Minerals Availability.

The DEIS fails to consider and discuss the fact that domestic mineral production is necessary to minimize dependence on foreign sources of minerals and to maintain our economic and national security. The DEIS must discuss how the adverse impacts to the rate of domestic discovery will result in increased reliance on foreign minerals that would be associated with Alternative 3.

In its June 20, 1997 letter to Paul McNutt, NWMA suggested that the DEIS must analyze the impact of changes to the 3809 regulations on the supply of domestic hardrock minerals, including the potential for increased reliance on foreign mineral supplies and the impact that would have on the balance of foreign trade payments. NWMA also suggested that the DEIS should consider how the 3809 regulations could be modified to encourage and facilitate mining on BLM administered lands and the resulting positive economic impacts of increased mineral exports and decreased mineral imports. The DEIS fails to consider any of these issues. BLM's omission of these issues is not only unresponsive to NWMA's comments, but is in direct conflict with Section 102 (a)(12) of FLPMA, in which Congress declared that it is the policy of the United States that –

> The public lands be managed in a manner which recognizes the Nation's need for domestic sources of minerals, food, timber and fiber from the public lands, including the implementation of the Mining and Minerals Policy Act of 1970 (30 USC § 21 a) as it pertains to the public lands.

11. The DEIS fails to disclose how the BLM's Preferred Alternative and Proposed Rule comply with U.S. laws that recognize the need for hardrock mining on federal lands.

In addition to the section of FLPMA quoted above, the Mining and Minerals Policy Act of 1970 states:

> The Congress declares that it is the continuing policy of the Federal Government in the national interest to foster and encourage private enterprise in (1) the development of economically sound and stable domestic mining, minerals, metal and mineral reclamation industries, (2) the orderly and economic development of

> domestic mineral resources, reserves, and reclamation of metals and minerals to help assure satisfaction of industrial, security and environmental needs, (3) mining, mineral, and metallurgical research, including the use and recycling of scrap to promote the wise and efficient use of our natural and reclaimable mineral resources, and (4) the study and development of methods for the disposal, control, and reclamation of mineral waste products, and the reclamation of mined land, so as to lessen any adverse impact of mineral extraction and processing upon the physical environment that may result from mining or mineral activities.
>
> For the purpose of this section "minerals" shall include all minerals and mineral fuels including oil, gas, coal, oil shale and uranium.
>
> It shall be the responsibility of the Secretary of the Interior to carry out this policy when exercising his authority under such programs as may be authorized by law other than this section. For this purpose the Secretary of the Interior shall include in his annual report to the Congress a report on the state of the domestic mining, minerals, and mineral reclamation industries, including a statement of the trend in utilization and depletion of these resources, together with such recommendations for legislative programs as may be necessary to implement the policy of this section.

FLPMA did not repeal the Mining and Mineral Policy Act of 1970. In fact, the existing 3809 regulations BLM recognize that "preventing unnecessary or undue degradation" was not intended to impede the development of public lands' mineral resources. 43 CFR 3809.0-2. The authorizing statutes which govern BLM's initial promulgation of the 3809 regulations remain in force virtually unchanged today. The rulemaking process does not grant BLM the authority to ignore, repeal or amend these congressional mandates.

In view of the decrease in exploration and mining on the public land that will occur if the Proposed Rule is implemented, BLM must explain how this complies with Section 102 (a)(12) of FLPMA and the Mining and Mineral Policy Act of 1970.

12. The DEIS Fails to Consider and Discuss Reasonable Alternatives to Facilitate Mining and to Create Reclamation and Environmental Incentives.

As discussed above, the DEIS fails to disclose how BLM's Preferred Alternative and Proposed Rule comply with Section 102 (a)(12) of FLPMA and the Mining and Mineral Policy Act of 1970. NWMA submits that neither the DEIS nor the proposed rule fulfill this responsibility. In fact, NWMA believes that the increased uncertainty, costs and delays associated with the Preferred Alternative will discourage the policies sought to be promoted by the Mining and Mineral Policy Act of 1970.

The DEIS fails to discuss how the 3809 regulations could be amended to encourage and facilitate environmentally responsible mining and reclamation of abandoned mines. The DEIS fails to disclose why this comment that NWMA submitted during scoping was rejected.

13. The DEIS Fails to Consider and Discuss How the Proposed Rule Complies Vice President Gore's Reinvention of Government Initiative.

Although the report published in conjunction with the Clinton Administration's "reinvention" initiative, *Creating a Government that Works Better and Costs Less, Report of the National Performance Review*, Vice President Al Gore, September 7, 1993 ("Gore Report"), does not carry the force and effect of law, NWMA has been led to believe that it represents the Administration's philosophy of governing. *See* "More Benefits Fewer Burdens: Creating a Regulatory System that Works for the American People," copy attached and incorporated by reference. Two areas in the Gore Report are particularly applicable to the Proposed Rule, the DEIS and the rulemaking process undertaken by BLM.

The Gore Report consists of agency specific discussions and recommendations, including several for the Department of Interior. On page 1 of the Executive Summary, the Department of the Interior report states "several DOI issues involve stripping away barriers that prevent the effective, efficient governance; eliminating federal micromanagement of state and local government; or managing across agency lines through boundary spanning mechanisms." (Emphasis added).

Throughout the public hearings conducted by BLM during the comment period, and in these comments, countless examples have been presented of how the Proposed Rule flies in the face of this objective. Existing MOUs and MOAs between the individual States have proved effective and have reduced duplication of state and federal resources.

On page 49 of the Department of Interior portion of the Gore Report, Action Item 10 states: "DOI should identify all parties that may be interested in a rulemaking and involve them early in the process. Specific examples of BLM's failure to accomplish this objective can be found in the oral testimony provided in Salt Lake City, Utah and Ontario, California. In Salt Lake City, several commenters stated that BLM failed to provide notice of the rulemaking to mining claimants. In Ontario, California, Barrett Wetherby, a California native and prospector, said he was not provided the necessary reference materials he needed to comment on the proposal. During the evening session in Ontario, Jack Liget said he asked for notification of meetings from BLM and never received notice. He also asked to be put on a BLM 3809 mailing list, but his name was never put on such a list. This is hardly an effective way for BLM to encourage participation in the rulemaking process.

Barrett Wetherby, Jack Liget, and others that are similarly situated are not likely to review the *Federal Register* in the normal course of business. This population, however, can be readily identified by state BLM offices. BLM could have easily and effectively notified these claimants about the proposed rulemaking. BLM failed to adequately notify a large segment of the population that will be adversely impacted if the current 3809 program is repealed and replaced by the onerous and unnecessary version currently proposed by BLM.

Government does not have to be reinvented to recognize the serious impacts this proposed rulemaking would have on small miners and prospectors if it were enacted. While BLM may have attempted to follow the letter of the law regarding public notice, it failed to follow its spirit,

and ignored the lofty proclamations set out in Gore Report and in OMB's "More Benefits Fewer Burdens…" report cited above.

COMMENTS ON THE CONTENT OF THE DEIS DEVELOPED IN CONJUNCTION WITH THE REVISED 3809 REGULATIONS

1. The DEIS Mischaracterizes "Problems" Associated with Notices of Intent
Throughout the rulemaking process, the BLM has asserted that one of the principal reasons the 3809 regulations need to be rewritten is due to environmental problems associated with NOIs. However, the data in the DEIS do not support this contention. To the contrary, the data presented suggest that problems associated with NOIs are limited in scope and nature, and easily resolved through improving the existing administrative process.

In describing the environmental consequences of the No Action Alternative (i.e., no changes to the NOI process), the DEIS states the following:

> Notice provisions could be difficult to enforce because no reclamation bond is required for Notice-level activity. The lack of a bond and enforcement process could result in areas not being reclaimed when operators leave, *although this is not a common practice. BLM issued about 500 notices of noncompliance (out of about 29,400 Notices filed since 1981) for failure to reclaim, representing 2% of all Notices submitted*. (DEIS, page 89, emphasis added).

A 98 percent compliance track record (i.e., a two percent noncompliance history) hardly constitutes a serious problem. In fact, this enviable high level of compliance impresses us as a significant achievement. The BLM should evaluate other alternatives, like better implementation (see the discussion below recommending an NOI Alternative), to evaluate ways to correct the two percent noncompliance problem. There is no demonstrated need for the BLM's Proposed Action (Alternative 3) justifying a wholesale rewrite of the regulations.

In addition, BLM's existing NOI process already gives the agency adequate authority to regulate impacts due to NOI level exploration. The unnecessary and undue degradation performance standard mandated in the current 3809 regulations applies to mineral exploration activities pursued under either an NOI or a Plan of Operations (POO). Thus compliance with all applicable environmental laws and regulations, and appropriate reclamation are requirements for <u>both</u> NOI and POO sites. A thorough and objective review of exploration and reclamation practices at NOI sites throughout the country would confirm what the BLM's own figures already indicate: that numerous environmental protection measures are routinely employed, and that reclamation is complete and successful at nearly all NOI exploration sites.

Under the existing 3809 regulations, BLM commonly places restrictions and requirements on NOI level activities to protect cultural resources, riparian areas, wetlands, wildlife, and other environmental resources. BLM already has appropriate regulatory tools and policies for controlling impacts associated with NOI level operations. To the limited extent that problems at NOI sites occur, the problems are attributable to poor administration and implementation of the existing regulations -- not due to inadequate regulations. These administrative problems and implementation inconsistencies appear to result from budget and staffing constraints. The

proposed changes will not result in improved administration, a higher level of environmental protection, or better reclamation. However, the unwieldy process outlined in the proposed rule will create enormous administrative and implementation problems for the BLM, and will result in reduced exploration on BLM administered lands.

It should also be recognized that the types of surface disturbance and environmental impacts typically associated with NOI level exploration can be fully mitigated. Straightforward, conventional reclamation practices consisting of earthwork (recontouring and regarding) and revegetation have a demonstrated track record of successful reclamation of drill roads, pads, and exploration trenches. Today, it is common practice at NOI exploration sites to regrade exploration drill roads and pads to return these disturbed areas to approximate original contour. These sites are then revegetated using BLM approved seed mixtures.

As stated by numerous industry representatives throughout the public scoping process on the proposed regulations and DEIS, the mining industry supports the addition of a bonding requirement for NOI level operations. However, the industry does not support the wholesale revision to the NOI process contained in the proposed regulations. This level of change is unnecessary, inappropriate and counterproductive. The BLM's ill fated attempt in 1997 to require bonds for NOIs provides sufficient proof that the agency does not have to embark upon a wholesale revision of the 3809 regulations to add a bonding requirement for NOIs.

We remind BLM of the opinion rendered by U.S. District Court Judge June L. Green when she overturned the BLM's 1997 NOI bonding requirements in 1998. *Northwest Mining Association v. Babbitt, et. al.,* 5F. Supp. 2d 9, (D. DC. 1998) (copy attached and incorporated by reference). Two aspects of the court's remand are relevant to BLM's currently proposed rule regarding bonds for NOIs. Judge Green concluded that BLM already has adequate authority to protect the environment. The current complex rulemaking process could be avoided by focusing on bonding for NOI level activities.

BLM's 1997 bonding decision was overturned because the agency failed to perform a proper analysis of the impacts that the new bonding requirement would have on small businesses. As discussed in more detail in this letter and in NWMA's separate letter attached hereto, we find that the agency's Benefit-Cost Analysis/Unfunded Mandates Analysis/Initial Small Business and Regulatory Flexibility Act Analysis for this rulemaking is just as seriously flawed as the analysis which Judge Green found deficient.

The BLM's economic and small business analysis seriously mischaracterizes exploration and fails to consider mineral exploration and mineral production as distinctly different mining industry sectors. Although the analysis acknowledges that exploration is typically performed by small companies, the underlying assumption is that most exploration is conducted by larger companies:

> "Exploration activities are often considered higher risk activities and may be conducted by relatively less well capitalized firms. However, a substantial portion of exploration activities are conducted by major mining companies which would not be expected to be impacted by changes to the bonding requirements. Available data does not allow the BLM to readily distinguish between the

> employment and financial characteristics of existing Notices." (Initial Small Business and Regulatory Flexibility Act analysis, page 93).

It should be noted that while larger companies perform a significant portion of the NOI level exploration work, many lease claims from small companies, individual geologists, and prospectors. Property submittals from these smaller entities comprise an important component of the mineral exploration property portfolios of many major mining companies.

A number of today's major operating mines started out as properties that small geology groups and individuals leased to larger mining companies. BLM's current economic and small business analysis completely fails to address the impact of the proposed rule on this segment of the mining industry. These analyses also ignore the inevitable and substantial decrease in the rate of discovery (and ultimate reduction in U.S. mineral production) that will result if this flow of property submittals from small businesses to larger companies dries up due to an unworkable NOI process for exploration.

There may be legitimate, site-specific concerns regarding mining and mineral processing operations conducted under an NOI. However, NOI level mines and mineral processing projects are a very small subset of the NOI universe. The DEIS should evaluate this as a separate issue and consider surgical changes to the existing regulations to address NOI level mining and mineral processing operations.

2. Congress Has Already Solved the NOI "Problem"

To the extent to which a problem existed with the NOI process, it appears that Congress solved this problem in August 1993 with the vote to eliminate the need for assessment work. In August 1993, Congress changed the requirement for all mining claimants to perform $100 of annual assessment work for each unpatented claim, and substituted the current requirement to pay an annual claim maintenance fee, with certain exceptions. Although many claim owners performed rigorous geologic work (i.e., drilling, sampling, geophysical surveys, etc.) to satisfy the assessment work requirement, some claim holders used more basic methods. It was not unusual for some claimants to fulfill the assessment work requirement mainly through trenching and other activities that created surface disturbances. Mining claimants' need to perform physical, on-the-ground work to meet the assessment work requirement, and to create visible proof that the work had been done, was thus the driving force behind much of the NOI-level surface disturbance created prior to 1993. At the very least, BLM should undertake a comprehensive survey of post-1993 NOI exploration work to quantify to what extent, if any, problems with NOI level exploration still exist.

3. Inaccurate and Inflammatory Statements in the DEIS Should be Eliminated

NWMA is very concerned about the following false and inflammatory statement on page 89 of the DEIS:

> Under the existing regulations, if the area occupied by an operation increases by no more than 5 acres a year, the operation could remain a Notice-level mine and bypass the Plan of Operations process. Some operations could become fully

> operational mines exceeding 200 acres, be regulated only by a Notice, and still not have to undergo environmental review.

First, this blatant statement is not at all consistent with the plain language of the current regulations which clearly state in section 3809.1-3 (a):

> All operators on project areas whose operations, including access across Federal lands to the project area, cause a cumulative surface disturbance of 5 acres or less during any calendar year shall notify the authorized officer in the District office of the Bureau of Land Management having jurisdiction over the land in which the claim(s) or project area is located. Prior to conducting additional operations under a subsequent notice covering substantially the same ground, the operator shall have completed reclamation of operations which were conducted under any previous notice. Notification of such activities, by the operator, shall be made at least 15 calendar days before commencing operations under this subpart by a written notice or letter.

Further, many of our members have worked with BLM offices throughout the western U.S., and have extensive experience with both the NOI and the Plan of Operations processes. None of our members have encountered BLM employees that would allow such an abuse as this scenario describes. The scenario cited above strays so far from the current regulatory language and collective experience of our members that we are forced to conclude that it has been willfully and knowingly fabricated for the purpose of supporting Alternative 3. This apparent contempt of the integrity of the rulemaking process significantly diminishes the credibility of the entire DEIS. It seems clear that BLM had no intention of performing an honest, objective environmental analysis based on fact, sound science, or law.

It is inappropriate for BLM to fabricate mumbo-jumbo to justify the need for new regulations. Of course, the only alternative to this unpleasant conclusion would be gross incompetence on the part of all BLM employees involved in preparing the DEIS. It is far more likely that political appointees are responsible for such a fabrication than career BLM staff members.

4. The DEIS Should Evaluate a Specific Alternative Devoted to Changes to the Notice of Intent Process

The DEIS describes a concern that NOI level activities are occurring in environmentally sensitive areas without adequate BLM involvement. However, it is the collective experience of our members that BLM commonly places restrictions and requirements on NOI level activities to protect cultural resources, riparian areas, wetlands, wildlife, and other environmental resources. Based on this experience, BLM has demonstrated that the agency already has appropriate regulatory tools and policies for controlling impacts associated with NOI level operations. If problems are occurring, they are most likely due to poor administration and implementation of the existing regulations -- not due to inadequate regulations. These administrative problems and implementation inconsistencies probably result from budget and staffing constraints.

With this in mind, NWMA requests that BLM evaluate a fifth reasonable alternative -- “The NOI Alternative”. This alternative should focus on the NOI process and how to use the existing regulations to address any remaining problems (i.e., non-assessment work issues) associated with

failure to reclaim NOI sites, or NOI activities in sensitive areas. The NOI Alternative should determine how increased staffing and budget levels could achieve more consistent and improved oversight of NOI activities. We also recommend that this alternative consider adding a financial assurance requirement for NOI level operations.
NWMA finds no justification whatsoever for BLM's current proposal for a complete revision of the 3809 regulations. We feel that proper analysis of an NOI Alternative would show that any verifiable problems with the existing regulations could be solved with focused, surgical changes to the rule, and more consistent and complete implementation of the existing 3809 regulations.

5. The DEIS Should Evaluate a Specific Alternative Devoted to the No-Action Alternative With a 25 to 35% Increase in Funding to Administer the Current Regulations.

The DEIS states that it is difficult to predict the implementation costs for the Preferred Alternative, and then states "Under the proposed regulations the costs would increase by 25-35%." The data in the DEIS supports the conclusion that problems, if any, are associated with implementing the current regulations (i.e. a lack of sufficient staff and resources). NEPA requires BLM to consider and analyze a no-action alternative with 25 to 35% increase in funding to administer the current regulations. NEPA further requires a comparison between the current regulations with 25 to 35% increased funding, the Preferred Alternative and Alternative 2, State Regulation. These are very reasonable alternatives to the BLM preferred alternative.

In view of the fact that BLM has all the power and authority it needs to protect the environment from the largest mining operations, NWMA submits that additional revenues would enable BLM to provide the staffing and training necessary to better implement the existing regulations. The DEIS should have considered, analyzed and discussed this alternative.

Furthermore, the DEIS acknowledges that BLM has already implemented a number of the proposed changes. Therefore, extensive rulemaking to affect these changes is not necessary. Nor is rulemaking required to achieve consistent application of the existing regulations and policies. This can and should be done at the policy level through better communication within the BLM and between the BLM and the respective states. BLM should assess what would be required in terms of manpower, budget, and training to achieve better and consistent implementation of the current 3809 regulations. Changes to the existing regulations should not be considered until sometime after better and consistent implementation of the existing regulations has been achieved. And then, only if identified issues still remain that cannot be addressed with the existing regulations.

The fact that the DEIS acknowledges that many of the elements of the Proposed Rule are already a reality in some states, and for some projects proves that under some circumstances, BLM is capable of what the agency clearly regards as superior implementation of the existing regulations. The DEIS should analyze the management and budgetary resources that would be required to provide this type of implementation nationwide. In other words, if some BLM offices are already taking these recommended steps, what would it take to enable other offices to follow this lead.

6. Appendix E "Changes in Mineral Activity" to the DEIS is Based on Numerous False Assumptions and Incorrect Statements that Raise Substantial Questions About the Conclusions Reached in the DEIS.

BLM's Appendix E, "Changes in Mineral Activity," contains invalid data, defective analyses, and unsupported inexpert conclusions. As a result, BLM has issued a fundamentally flawed DEIS because its environmental analysis, comparative analysis of alternatives, and economic analysis are based substantially, if not completely, on the conclusions from Appendix E and Table E-1. BLM built its DEIS on a shaky foundation by disregarding important factors and information, selecting unsuitable methodologies, and incorrectly utilizing the chosen methodologies.

Given the meaningless conclusions in Appendix E, BLM must re-do its analysis. Otherwise, BLM will be violating NEPA and the CEQ regulations implementing NEPA. Pursuant to NEPA, BLM must take a "hard look" at the environmental consequences of its proposed action. As part of the EIS analysis, CEQ requires BLM to "insure the professional integrity, including scientific integrity, of the discussions and analyses" and "identify any methodologies used and . . . make explicit reference . . . to the scientific and other sources relied upon for conclusions in the [EIS]." 40 C.F.R. § 1502.24. CEQ also requires that if BLM has "incomplete information relevant to reasonably foreseeable significant adverse impacts [that] is essential to a reasoned choice among alternatives and the overall costs of obtaining it are not exorbitant, the agency shall include the information in the [EIS]." 40 C.F.R. § 1502.22(a). BLM has not complied with either mandate.

Appendix E begins with the following sentence: "To help assess the reasonably foreseeable environmental impacts of the proposal and alternatives, several assumptions were developed on future mineral exploration and development under existing regulations, management practices, and policies." Unfortunately, many of these assumptions are false or in direct contradiction to reality. For example:

Assumption #1 states that the "rate of exploration will remain about the same in the United States." All recent data indicate a significant decline in exploration in the United States as a result of permitting delays, uncertainties, and the anti-mining policies of the Clinton Administration and the current Secretary of the Interior and his Solicitor. The Solicitor's November 1997 millsite opinion and the March 25, 1999 letter to Battle Mountain Gold Company revoking the favorable Record of Decision on the Crown Jewel Project are two examples of current administration policies that are resulting in a decrease in U.S. exploration.

Assumption #6 cannot be supported by the facts. NWMA submits the past trend in the number of mining notices and Plans of Operations bears little resemblance to future levels of activity or inactivity in the current political climate. BLM also assumes that domestic industrial minerals production will continue to increase. NWMA believes this assumption is false and cites the Excess Reserves opinion and its impact to support our contention that domestic industrial minerals production will likely decrease.

Assumption #10, "Industrial mineral operations will cause a comparable amount of surface disturbance as precious metal mines, …" is patently false. The greatest amount of surface disturbance is associated with open-pit gold and copper mines. Industrial mineral surface

impacts are significantly lower than open-pit gold and copper mines. NWMA also believes that it is inaccurate to assume that overall mineral activity on public lands "will remain steady or slightly decline." The uncertainties in permitting and the policies of this Administration, as mentioned above, will combine to cause significant decreases in mineral activity on public lands.

The assumption under Alternative 1 that future mining under the Mining Law will remain relatively stable under existing regulations, management practices and policies is false. The DEIS was published before the March 25, 1999 letter to Battle Mountain Gold Company revoking the favorable ROD on the Crown Jewel Project.

The presumption for Alternative 3 that the overall level of mineral activity will decline by 5% or less is off by an order of magnitude. It is apparent that BLM does not understand the mining industry "food chain." BLM assumes that most exploration is done by mining companies who operate mines. This is incorrect. A significant portion of the exploration in the U.S. is conducted by exploration geologists and small, grassroots exploration companies. Most new mines are originally prospects of an exploration geologist or a grassroots exploration company. Exploration is the mining industry's R & D. These exploration geologists and grassroots exploration firms develop a project to the point where it is sold to a junior mining company who then develops the project to the point where it can be sold to and/or joint ventured with a large mining company with expertise in operating producing mines. Virtually every one of the large Carlin Trend mines in northern Nevada began as a small grassroots exploration project. This includes the Barrick Goldstrike Mine and Newmont's Carlin trend production. Thus, the impact of the Proposed Rule on exploration geologists and small grassroots exploration companies will result in a significant decline of the overall level of mineral activity on the public lands because it will reduce the number of future discoveries which could become future mines.

BLM selected unsuitable methodologies and incorrectly utilized those chosen methodologies. In particular, the Delphi Method is inappropriate to the task at hand, and even if it were appropriate, BLM did not implement it correctly. The Delphi Method, which is used for structuring group communications, is generally selected to address questions that involve the use of multiple subjective judgments and address questions that are not amenable to precise analytical techniques. *See* Harold A. Linstone and Murray Turoff, The Delphi Method: Techniques and Applications (1975).

Although this could apply in some respects to future changes in mineral activity as a result of amending the 3809 regulations, more accurate information can and should have been obtained by the BLM from more direct sources. For example, BLM could have readily obtained information by hiring an economic expert who is trained to identify factors that influence mining investment activities and delineate the impacts that would result from such proposed changes as pit backfilling requirements, financial guarantees, additional delays in approval of notice-level activities, and post-mining monitoring requirements. BLM could also have obtained that information from the members of the industry, who regularly hire such experts to assist in making investment decisions based on factors including regulatory requirements. Better, more accurate information would have generated a useful analysis in Appendix E. BLM had ready access to that information but failed to use it.

Even if the Delphi Method were a proper method in the given circumstances, BLM failed in its obligation to properly implement the method. The Delphi Method is used to gather and assimilate information from experts. See Linstone & Turoff (1975) at 160 ("Delphi is often used to combine and refine the opinions of a heterogeneous group of experts in order to establish a judgment based on a merging of the information collectively available to the experts."). The analysis here required expertise in the area of mining economics and investment. BLM's DEIS team members, the majority of which work in the natural resource arena as wildlife biologists, cultural resource specialists, range management scientists, ecologists, or geologists, simply do not have the requisite expertise to conduct an economic analysis. Yet BLM states in the DEIS that "each team member *independently* interpreted the impact matrices and mine cost model results" and translated those interpretations into estimates quantifying changes in future mineral activities such as exploration and mineral development. *See* DEIS at A-103 (emphasis added). Making such estimates is surely outside the expertise of the majority of the EIS team members.

The Mine Cost Models are flawed and do not accurately represent exploration and mining in the U.S. BLM's mine cost models are considerably flawed for three reasons. Most importantly, BLM's models violate a fundamental economic principle – the time value of money – by omitting any consideration of the economic costs of delay in permitting and approval of mining projects. Assumption #6 states "Time delays are not added to cost figures. It is assumed that operators will submit complete documents in a timely manner and that BLM will process projects on time. Time is given no monetary value." DEIS at A-118. Remarkably, the DEIS later states, for example, that "[t]he automatic stay for appeals under Alternative 4 could delay exploration as well as potential future profits if an economic deposit is discovered. For this model costs of delay were not analyzed, but under Alternative 4 these costs might exist." DEIS at A-125.

BLM has no basis to assume that it will process projects on time. In fact, it is our members' experience that BLM rarely, if ever processes projects on time. Furthermore, the time value of money is one of the most important capital cost items in determining whether or not to go forward with an exploration and/or mining project.

Delay (and the associated costs) is a predominant concern of the industry. *See*, *e.g.*, Doug Dreisner, Fourth Annual Exploration Survey, Nevada Division of Energy and Minerals (October 1998) (indicating that time frame uncertainties and delays associated with permitting were third and fourth out of twelve factors influencing exploration decisions, with their importance exceeded only by favorable geology and commodity prices); Doug Dreisner, Exploration Survey, Nevada Division of Minerals (June 1997) (indicating that time frame uncertainties and delays associated with permitting were second only to favorable geology as the most important of nine factors influencing exploration decisions). In both of these empirical surveys, a large and varied segment of the industry (51 and 49 companies, respectively, focusing on a variety of minerals) responded to the survey. Economic experts also recognize these uncertainties and delays as key factors influencing mineral exploration and development activities. See, for example, the economic analysis of the proposed regulations prepared by Dr. Michael K. Evans of Northwestern University (commissioned by the National Mining Association and Nevada Mining Association), which these comments incorporate by reference.

BLM's DEIS analysis of the exploration model simply ignores these concerns. *See, e.g.,* DEIS at A-123 (assuming no costs associated with delay). BLM's preferred alternative and Alternative 4 build in and will result in inevitable delays (e.g., requiring 15 business day waiting period for Notice-level activities, lowering or removing the threshold for notice-level activities so that plan of operations is required, and increasing opportunities for administrative appeals), but BLM does not build into its models the costs of these delays.[1]

Secondly, the models are also problematic because they assume that compliance with the proposed regulations will not result in additional costs. This further assumes that the proposed regulations in essence retain the status quo.[2] This couldn't be further from the truth. The proposed changes would result in increased costs due to, for example, additional delays, confusion over the new requirements, compliance with parallel or inconsistent regulations of federal and state agencies, and compliance with BLM's newly proposed mitigation performance standards such as pit reclamation. Notably, BLM acknowledges this general truth in the exact same document: "Regulation changes generally affect the mining industry economically. Effects involve such environmental costs as permitting and reclamation, and the time value of money." DEIS at A-117.

Third, regardless of what information BLM did or did not consider, the models are flawed because BLM failed to take into account a fundamental economic principle in the mining industry – investment decisions are made on the basis of projected cash flow and the rate of return rather than a simple accounting of costs. The models inappropriately focus attention on costs rather than cash flow issues, and thus they have little meaning in the context to which they are applied.

Based on industry experience in working with BLM, the exploration and mining models contained in Appendix E bear no relationship to reality. The type of exploration program described in the "Exploration" Model is not representative of today's exploration projects. Frequently, exploration projects are drilling much deeper than 200 feet. Furthermore, throughout the models, BLM grossly underestimates the cost to obtain a bond. Many smaller companies doing exploration may be unable to qualify for bonds and must put up cash or certificates of deposit like instruments. If a company does qualify for a reclamation bond, the premiums are generally significantly higher, at least five times greater than the 2% used by BLM.

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[1] We understand that the BLM characterizes the model as "theoretical and highly general." Nevertheless, we must express our strong disagreement with almost every projected cost in every one of the mine cost models. We believe that the BLM has underestimated the costs of preparing a plan of operations and claim validity examinations by at least an order of magnitude.

[2] *See, e.g.,* DEIS at A-123 (regarding the Exploration Model, "Impacts on exploration would be slight because BLM and industry are already generally following these procedures in authorizing operations and accepting reclamation."); DEIS at A-130 (regarding the Placer Model, "Impacts to the industry would be minimal because BLM and industry are generally following these procedures in authorizing operations and accepting final closure and reclamation."); DEIS at A-139 (regarding the Strip Mining Model, "Impacts to the industry, however, would be minimal because BLM and industry are generally following these procedures in authorizing operations and accepting final closure and reclamation."); DEIS at 151 (regarding the Open Pit Model, "Impacts to the industry under the Proposed Action would be slight because BLM and the industry are generally following these procedures in authorizing operations and accepting final closure and reclamation.").

In addition, the models grossly misrepresent the requirements under Alternative #2, the state model. Several times BLM assumes nothing would be required to be filed with the state, when in truth and in fact, all the states require documentation, sometimes extensive documentation. BLM's impact matrices are considerably flawed for four reasons. We first note that the weights and scores set forth in the matrices do not accurately represent the level of importance and change that components of the proposed regulations will have. For example, despite the fact that the proposed citizen inspection requirements are of great concern to most of the mining industry (as is indicated by comments already received by BLM), the new penalties and enforcement procedures are given a moderate weighting and a low negative score. Even more notable is the treatment given to the pit backfilling requirement, which inaccurately diminishes the impact such a requirement would have. Still, this point pales in comparison to the fact that the methodology upon which the matrices are based is flawed.

Second, we reassert our comments above with respect to the cost models, because the same infirmities exist with respect to the impact matrices. The matrices fail to consider the impacts created by uncertainties and delay that will inevitably be generated if the proposed regulations are implemented.

Third, the matrices omit consideration of important regulatory components in the areas of liability and performance standards that will directly affect future mineral activities. While the DEIS includes discussion of the benefits the BLM anticipates from implementation of these regulatory changes, the DEIS omits discussion of the costs. The list include the following:

- Liability – the matrices fail to consider the following:
  - joint and several liability for all 3809 obligations (proposed § 3809.116);
  - steps involved to relieve liability upon transfer of mining claim or operation (proposed § 3809.116);
  - proposed definition of operator which specifically extends liability

- Performance standards – the matrices fail to consider the following:
  - MATP requirement (this is not considered by the matrices' analysis despite the fact that it may be the most costly of all the newly proposed performance standards);
  - mitigation (proposed § 3809.420(a)(4));
  - concurrent reclamation (proposed § 3809.420(a)(5));
  - limitations on impacts on water quantity (proposed §§ 3809.420(b)(2), (b)(2)(ii)(c)).

Finally, the matrices are flawed because they evaluate the proposed regulations in isolation. The matrices treat the industry's predicted responses to the regulations as isolated occurrences, when in reality the accumulation of the responses will reduce the overall range of mining investment opportunities. The matrices do not consider the cumulative impacts on the industry, and, in particular, they do not consider the relationship of exploration to mineral development (reductions in current exploration activities will result in reduction of future mineral development activities).

BLM's Appendix E is a most egregious example of BLM's flawed process and is at the same time the most crucial part of BLM's EIS analysis. BLM's analysis fails to incorporate fundamental economic principles, fails to use accurate or complete data, and relies upon unsuitable methodology which was implemented by a panel untrained in the requisite area of economic expertise. Unless BLM cures the defects in its analysis, it will be in violation of the Administrative Procedures Act and NEPA.

7. The DEIS and the Benefit-Cost Analysis/Unfunded Mandates Reform Act Analysis and Initial Small Business and Regulatory Flexibility Act Analysis Fail to Comply with Executive Order 12866.

According to the Office of Management and Budget's (OMB) December 1996 Report entitled "More Benefits Fewer Burdens: Creating a Regulatory system that Works for the American People," (OMB Report), Executive Order 12866 (E.O. 12866) sets forth the President Clinton's "'regulatory philosophy,' which holds that regulations should: be issued only where necessary; be based on a full assessment of costs and benefits of all alternatives, including not regulating; and reflect the alternative that maximizes net benefits (unless a statute requires another approach)." E.O. 12866 instructs agencies to adhere to 12 "principles of regulation." These principles provide a series of guidelines for federal agencies to follow in developing "more focused, more effective, more efficient, and less burdensome rules." E.O. 12866 calls on federal agencies to:

1. properly identify problems and risks to be addressed, and tailor the regulatory approach narrowly to address them;
1. develop alternative approaches to traditional command-and-control regulation, such as using performance standards (telling people what goals to meet, not how to meet them), relying on market incentives, or issuing nonbinding guidance in lieu of rules;
2. develop rules that, according to sound analysis, are cost-effective and have benefits that justify their costs;
3. consult with those affected by the regulation, especially State, local, and tribal governments;
4. ensure that agency rules are well coordinated with rules or policies of other agencies; and
5. streamline, simplify, and reduce the burden of Federal regulation.

Apparently, Interior and BLM failed to get the message. As discussed throughout these comments and the accompanying comments on the IRFA and the Proposed Rule, BLM has violated every one of these principles in this rulemaking.

Under principle 3., E.O. 12866 requires federal agencies to:

1. assess the costs and benefits (both quantifiable and non-quantifiable) of the regulation and its alternatives;
2. use the best available scientific, technical, and economic data when making decisions; and
3. meet the regulatory objective in the most cost-effective manner possible.

As discussed throughout these comments and the accompanying comments on the IRFA and the Proposed Rule, BLM 's assessment of the costs and benefits is laughable, BLM failed to use the best scientific, technical and economic data, and did not choose the most cost-effective manner to meet the regulatory objective of "preventing undue or unnecessary degradation. This failure to comply with E. O. 12866 is fatal to this rulemaking effort.

Chapter 3 of the OMB Report is entitled "Changing the Culture of the Regulatory System." The first two paragraphs of this chapter state:

> Developing tailored and cost-effective rules based on sound science and good information, as well as reinventing or eliminating existing rules that are obsolete or no longer make sense, are important components of the Clinton Administration's effort to reform the Nation's regulatory system. But Americans are not just affected by how rules are written; they are also affected by how rules are administered or enforced. As part of the regulatory reform effort, and working closely with the Vice President's NPR, the Administration has worked to change the nature of the regulatory culture. We are moving away from the traditional focus on strict compliance with procedural requirements and heavy fines for those that do not comply. Now, we are creating a system that stresses partnership with responsible actors--based on the results of what they achieve--and offers compliance assistance when they fall short of meeting those requirements, while reserving traditional enforcement techniques for the worst actors.
>
> In March 1995, the President and the Vice President emphasized their commitment to changing the regulatory culture. The President called for agencies to "get out of the business of mindlessly writing traffic tickets" and "playing ‘gotcha' with decent honest business people." He stated that the Government's objective should be "compliance, not punishment," and ordered agencies, where practicable: (1) to waive up to 100 percent of punitive fines for small businesses if they put that amount toward fixing the problem; and (2) to waive fines for small businesses altogether for first time violations in cases where the business has made a good faith effort to quickly come into compliance. This policy, along with other recommendations of the June 1995 White House Conference on Small Business that the Administration supported, were codified as part of the Small Business Regulatory Enforcement Fairness Act of 1996.

The proposed sections on Inspection And Enforcement (3809.600), and Penalties (3809.700) are egregious in the violation of the President's and Vice-President's directives cited above.

8. Some Specific Comments on the DEIS.

The following list of specific comments is by no means meant to be an exhaustive list of detailed comments on the fundamentally flawed DEIS. The failure of BLM to grant an extension to the comment period prevented a more comprehensive listing. There just wasn't enough time.

Page 5, Summary Issues identified in the scoping process do not include any demonstrated need for new regulations.

Page 9, Summary The last sentence of the last paragraph is incomplete. Public comment cannot be provided until the complete sentence is available.

Page 11, Introduction The first "issue of concern" prompting the new regulations is cited as "BLM's effectiveness and consistency in the day-to-day implementation of the regulations in the field" . It is difficult to understand how expanding the regulations and increasing the overlap with other agencies is going to enhance BLM's effectiveness and consistency.
Same reference The text cites "gaps in the current 3809 regulations". The majority of these gaps are already addressed by state regulations.

Page 12, Introduction The last "gap" (bulleted list) is an incomplete sentence or thought. Comment cannot be provided until a complete sentence is provided.

Page 13, Cooperating Agencies The DEIS text misrepresents the interactions with the Western Governor's Association and thus the DEIS does not fully disclose the issue. While the DEIS states that coordination at the state level was conducted via WGA, it does not state clearly WGA's letters to BLM or objections on the process.

Page 13, Mining Law and Mineral Policies Page 13 to page 17 provide the history of the mining law, yet page 5 clearly states comments received on the mining law were "not within the scope of this EIS". This appears to be a contradiction.

Page 18 - 24, Introduction This discussion of the issues raised during scoping is all subjective narrative. In only one case is an actual quantity of comments provided ("one comment suggested…."). For every other issue, the reader has no indication if an issue was mentioned once or thousands of times. The quantity or relative magnitude of comments on a particular issue must be provided to discern the real issues of concern.

Page 29, Description of Alternatives The description of public lands to which the 3809 regulations apply, provided on this page, should be the same as the "study area".
Page 31, State-Federal Coordination The discussion regarding BLM's MOU's with the states undermines the need for revised regulations. This discussion demonstrates the effectiveness of the current system.

Page 33, Performance Standards This discussion states that existing regulations do not specify requirements for plugging drill holes. This is not a gap that results in environmental damage because every western state has extensive drill hole plugging requirements.

Page 35, Financial Guarantees To clearly demonstrate the need for revisions on reclamation bonds, the EIS should provide examples of mines on BLM land where the current reclamation bonding was insufficient and the environment was compromised as a result. Need for revision to bonding has not been provided.

Page 36, Alternative 2 Based on the information provided in the DEIS, alternative 2 is demonstrated to be the most cost efficient and protective of the environment.

Page 40, Alternative 2 The discussion of the regulations regarding the Plan of Operations includes 2 possible approaches. The EIS is supposed to identify impacts of a proposed action. How can impacts be identified if the possible approaches are still being decided? Which of these 2 approaches will be used?

Page 40, State-Federal Coordination The BLM cannot decide if the state has adequate resources and funding to take the lead agency role. This must be a decision of all parties involved. BLM's views of a state's ability are arbitrary and must be balanced with a concurrence process including all parties.

Page 41, Notice and Plan Of Operations If the BLM timeframe can be extended to allow a site inspection, there must be a time limit. The site inspection must occur within 10 days, or the BLM review timeframe must proceed. An owner cannot be delayed indefinitely without recourse while the BLM frees someone up for a site inspection.

Page 45, Performance Standards The BLM's economic factors to consider when weighing the feasibility of pit backfilling must include the mineral resources compromised from future development or rendered inaccessible due to backfilling.

Page 45, Financial Guarantees This alternative includes allowing the public to comment before final bond release. It is not stated how comments would be solicited or handled, the timeframes for doing so, or the recourse for differences. Also, the value of this public comment is not discussed. The majority of the public is untrained in reclamation sciences; isn't this best left to knowledgeable and trained professionals?

Page 45, Inspection and Monitoring This alternative includes allowing citizens to accompany the BLM inspectors to mine operations. WHY? Mining companies, as all industrial projects, have extreme liability issues, as well as privacy issues, that the BLM cannot ignore. Further, most mines have a substantial public relations department that will provide mine tours to interested citizens. It is not apparent that allowing citizens to accompany BLM inspectors stemmed from the scoping process, nor is the need for this provided in the DEIS. Please justify.

Page 46, Implementation It is completely inadequate to state in the DEIS that "it is difficult to predict the implementation costs for BLM to administer the proposed regulations…". BLM must provide a comprehensive description of the alternatives. This includes estimates of the additional staff and other costs required to implement this alternative. It must also include a comparison of the costs to implement this alternative versus the costs of implementing the "no change" alternative and Alternative 2, State lead. A fair consideration of the alternatives cannot be done without this comparison. The statement in the DEIS that "costs would increase by 25 to 30%" has no supporting documentation. What is this based on?

Table 2-3, Summary of Potential Environmental Impacts This table precedes page 65; text indicates it should follow page 65. There is no reference for this table and no explanation of how the information in the table was derived. The validity of this table cannot be verified until an explanation is provided. The table appears highly inaccurate. For example, the impact of implementation of Alternative 3 is cited as a 5% decrease in mining. Alternative 3 includes pit backfillling as the prescriptive reclamation requirement. The impact of Alternative 3 due to this one requirement alone will be substantially more than 5%. Table 3 must be re-done with accuracy and with references and methodology provided to the reader.

Page 210, Use and Nonuse Values Table 3-30 (mis-identified in the DEIS as table 30) is irrelevant. What percent of these expenditures for wildlife related recreation in the study area is actually on BLM lands open for mineral development? An appropriate table should be provided in the FEIS which includes only the data for the impacted area, that is, the BLM regulated lands open for mineral development.

Page 211, Alternative 1 The "projections" provided relative to the price of gold are poor and do not reflect expert opinion regarding the outlook for gold. For base metals, the projection that "production is expected to increase slowly but steadily over the foreseeable future" is overly optimistic. No new copper projects are being permitted in the U.S. What is the source for this "slow increase in production"?

Page 222, Public Participation The DEIS text describes the extensive scoping process. The DEIS does not provide full disclosure, however; much of the public comment received was not incorporated or addressed in the regulations or DEIS. Despite extensive comment, few changes to the regulations were done.

Appendix F, Plant and Animal Lists This appendix is irrelevant unless information is provided regarding how these species lists correlate with BLM lands available for mineral development.

Appendix G, Economics All economic statistics provided are current to 1996. Since 1996, the price of all mineral commodities has plummeted, mining employment has dropped and mining operations closed. The statistics provided may be the most recent available, but they are not reflective of the U.S. mining industry of 1999.

Appendix G, Figure G-1 and G-2 These maps would provide useful information if the areas of BLM controlled lands were also plotted.

CONCLUSION:

In our June 20, 1997 letter to Mr. McNutt, NWMA expressed concerns that the Secretary was using the 3809 rulemaking process to advance a political agenda that disregards reality and any law found to be inconvenient. We have ongoing concerns that this is the case – especially in light of recent Department actions such as the Solicitor's opinion regarding millsite and lode claim ratio requirements and the March 25, 1999 letter to Battle Mountain Gold Company revoking the ROD on the Crown Jewel Project and the blatant fabrications included in this DEIS. We believe the 3809 rulemaking process should be an opportunity for collaboration and

constructive dialogue based on facts, science, and an honest assessment of the level of environmental protection and reclamation successes achieved under the current state-federal regulatory framework, including the existing 3809 regulations.

Unvarnished politicization of the process by high level appointees compromises the legal and ethical integrity of this process. The Secretary's ongoing vendetta against mining is unfortunate and inappropriate. One immediate action the Secretary should take as a sign of good faith is to extend the comment period on the Proposed Rule, DEIS and Benefit-Cost Analysis/Unfunded Mandates Reform Act Analysis and Initial Small Business and Regulatory Flexibility Act Analysis until 120 days after the National Academy of Science (NAS) Committee on Hardrock Mining on Federal Lands has completed their congressionally mandated study. The Secretary's current schedule ignores Congress' desire that the results of the NRC/NAS study be incorporated into the final rule, and would waste $800,000 of taxpayer money earmarked for the study.

There is too much complex material to review adequately within the 90-day comment period provided by BLM. Time did not permit an extensive review and analysis of the DEIS. Therefore, the failure of NWMA to comment on data or on a specific assumption, statement or conclusion in the DEIS is not to be construed as agreement with any of the findings or conclusions of the DEIS.

The DEIS is fatally flawed for the reasons set forth above and BLM must prepare a new DEIS in accordance with these comments and the requirements of NEPA and CEQ.

Sincerely,

Laura Skaer
Executive Director

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